



DEPARTMENT OF JUSTICE

Antitrust Division

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Douglass F. Rohrman, Esq.
Kech, Mahin & Cate
77 West Wacker Drive
Chicago, Illinois 60601-1693

Dear Mr. Rohrman:

This is in response to your request on behalf of the Post-Tensioning Institute ("PTI") for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to a proposal by PTI to make compliance with its Program for Plant Certification a prerequisite for manufacturer membership in PTI.

PTI is a trade association of firms and individuals involved in the construction of prestressed concrete structures that utilize a specific construction technique referred to as unbonded "post-tensioning." Unbonded post-tensioning is a method of reinforcing concrete or other structural elements by utilizing high strength steel wires in the concrete. The wires are stressed to a predetermined force by hydraulic jacks at one end and are locked off at both ends by anchorage devices. The wires are encased within a corrosion inhibiting coating and/or sheathing that prevents the wire from bonding with the concrete, and allows the wire to move freely during the tensioning process, even after the concrete has set.

The goal of PTI is to encourage the use of post-tensioning rather than competing systems or materials. It sponsors technical seminars and research designed to improve the integrity and safety of post-tensioned products and systems, and works with industry and government bodies on issues relating to post-tensioned structures. Among its activities, PTI has created a plant certification program that independently inspects and certifies the plant operations of

companies that produce certain types of unbonded post-tensioned products. Currently, the certification program is voluntary and open to non-members as well as members of PTI. Certification is administered by PTI, but executed by an agency independent of PTI and its members.

You have indicated that the creation of safe and reliable unbonded post-tensioning systems is a complex matter involving the proper manufacture, assembly, storage and shipping of the various system components. Since not all producers use the same standards of care in manufacture, assembly, storage or shipping, you suggest that there has been some variation in the quality of unbonded post-tensioned materials that has redounded to the disadvantage of the industry's efforts to compete with other systems. To improve the quality and reputation of unbonded post-tensioned products and systems, PTI proposes to make compliance with its program for certification of unbonded post-tensioned product plants a prerequisite for manufacturer membership in PTI. Non-members, however, would continue to be eligible for certification. And, PTI would not take any action designed to persuade others not to do business with firms that chose not to join PTI or satisfy its plant certification requirements.

Based on the information and assurances provided by PTI, the Department has no current intention to challenge the proposal to make certification under the PTI plant certification program a condition of PTI membership. The proposal would not appear to have the effect of facilitating price collusion or reducing output. To the extent that your assertion that neither membership in PTI nor compliance with its plant certification program is necessary successfully to compete for construction contracts is accurate, exclusion from PTI would not prevent a firm from competing in any market. The fact that PTI plant certification has been, and will continue to be available to nonmembers of PTI further supports your assertion that the purpose of the PTI certification program and PTI's proposal is not to restrain competition, but to promote safety and the quality of unbonded post-tensioned systems. Under these circumstances, and in the absence of any evidence that the certification program is being administered in a manner that unreasonably restrains rivals, PTI's proposal should not have an anticompetitive effect.

It is possible that PTI's proposal will have procompetitive effects. To the extent that it makes unbonded post-tensioned systems more competitive for various types of construction projects, it should advance consumer interests.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed membership requirement proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

Joel I. Klein
Acting Assistant Attorney General